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IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

ALEXANDER LOCE,
Petitioner,
- against -
THE STATE OF NEW JERSEY,
Respondent.

TINA KRAIL, ET ALS.,
Petitioners,
- against -
THE STATE OF NEW JERSEY,
Respondent.

BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONS FOR CERTIORARI TO SUPREME COURT OF NEW JERSEY BY AMERICAN CENTER FOR LAW AND JUSTICE, ET ALS.

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AMICI CURIAE

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INTERESTS OF AMICI

Each amicus curiae hereinafter named in support of the Petitions for Certiorari has an interest in this case because each is an organization which exists and acts for the purpose of achieving the legal recognition and protection of all human beings, whether born or unborn, and by actively seeking to end legalized abortion and the so-called "right to abortion". These amici represent literally millions of people from around the world. Their experiences with the tragic effects of abortion on, not only the immediate victims -- the children -- but upon women, fathers, siblings, the family and society generally, lend a most valuable perspective to the arguments to be presented that might otherwise be lost.

The amici curiae who appear in support of the Petitions for Certiorari are: ABORTION'S AFTERMATH ["AA"][1]; ACCION FAMILIAR ["AF"][2]; ADEVIDA[3]; ALLIANCE FOR LIFE

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[1]AA was founded in 1989 to provide networking support for post-abortion women in New Jersey. This Edison-based organization has ties with over 50 post-abortion support organizations in New Jersey, which in turn have contact with about 5,000 women per year.

[2]AF is an unincorporated association that was formed in 1979 in Spain in order to help the family with all aspects of problems facing the family today, including, in areas related to legal and moral issues. Its main office is located in Madrid. AF believes that the family is the root of all health and sickness in

["AFL"][4]; AMERICAN CENTER FOR LAW AND JUSTICE ["ACLJ"][5]; AMERICAN FAMILY ASSOCIATION,

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society. AF promotes family values and supports the position that life cannot be taken by anyone from the moment of conception until natural death.

[3]Organized in Madrid, Spain in 1979, Adevida provides financial, medical and human support to pregnant women in difficulties. It publishes a pro-life statement daily in the Spanish press which is signed by approximately 1,350 university professors and teachers. Its members participate annually in the March for Life.

[4]AFL was formed in Canada in 1972 and its main office is located in Winnipeg, Manitoba. Its purposes include educating Canadians on matters of human development, human experimentation, reproductive technologies, adoption, abortion, chastity, euthanasia and similar issues. AFL provides educational services and materials for its member groups to educate Canadians and provides counseling and referral services to the public with respect to unforeseen pregnancies and post-abortion trauma. AFL coordinates 250 educational pro-life groups throughout Canada.

[5]ACLJ is a national public interest law firm, chartered to enter the legal arena on issues of broad public interest. ACLJ has members in all fifty states. Attorneys from every state of the Union have affiliated with ACLJ to assist in the restoration of pro-liberty, pro-life and pro-family values.

INC. ["AFA"][6]; AMERICAN RIGHTS COALITION, INC. ["ARC"][7]; A.O.C.P.A.[8]; APOSTOLATUS UNITE ["AU"][9];

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[6]AFA is a corporation organized in 1977 with offices in Tupelo, Mississippi. AFA's local chapters are active in seeking to preserve the lives of unborn children and the physical and emotional health of their mothers. AFA has approximately 600 local citizen chapters throughout the U.S. which are active in seeking to preserve community integrity through the implementation of public decency laws. It has a subscribers list of more than 885,000 individuals and churches for its monthly newsletter, AFA Journal.

[7]ARC was incorporated in Tennessee in 1987. ARC assists women with the physical and emotional problems resulting from abortion by referring women to medical, emotional and legal providers for assistance, including bringing malpractice claims against those who injure them through abortions.

[8]Organized in 1982 in Paris, France and 13,000 members strong, A.O.C.P.A. is a pro-life organization engaged in judicial and financial actions against abortion. Its purpose is to mobilize the public to oppose abortion by taking legal action, demonstrating and lobbying members of Parliament.

[9]AU was organized in 1986 and incorporated in Maryland in 1988. It has its offices in Woodstock, Virginia. AU is a Catholic lay organization which has as its purpose to bring people to Jesus Christ to experience the Holy Eucharist through the Holy Mother of the Church, in

AUSTRALIAN FEDERATION OF RIGHT TO LIFE ASSOCIATIONS ["ARTL"][10]; BESWICK FAMILY FUND ["BFF"][11]; CAMPAIGN LIFE COALITION ["CLC"][12]; CATHOLIC WOMEN'S LEAGUE OF NEW ZEALAND

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union with the Holy Father. AU organizes Rosary Congresses which consist of one to seven day prayer gatherings featuring Eucharistic adoration, Marian devotion and sound church teaching. A Global Week of Prayer is conducted annually in 88 countries, with over 11 million participants, during which participants pray and fast to end abortion.

[10]ARTL was formed in Sydney in 1980 and has 30,000 members today. Its objects are to foster cooperation between member associations and to act as a national voice on all national matters regarding the protection and enjoyment of human beings of their right to life.

[11]BFF was formed in Sydney, Australia in 1967. It has 18 members, all of whom are members of the Beswick Family. BFF operates to support public charitable purposes and good works by personal and financial effort, including the protection of unborn human life.

[12]CLC is the pro-life national political organization in Canada. CLC engages in lobbying, counselling of pregnant women in distress and seeks to achieve the enactment of laws which will protect all human beings from the moment of conception until natural death.

INCORPORATED ["CWLNZ"][13]; CATHOLICS UNITED FOR THE FAITH, INC. ["CUFF"][14]; CENTRO DE INVESTIGACION Y DOCENCIA ["CDIYD"][15]; CHRISTIAN ACTION RESEARCH & EDUCATION ["CARE"][16]; CHRISTIAN ADVOCATES SERVING EVANGELISM ["CASE"][17]; COALITIONS FOR

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[13]CWLNZ was established in 1931 in New Zealand and has about 5,000 members. CWLNZ is based in each of the six dioceses of New Zealand. CWLNZ's objects are to unite Catholic women in New Zealand in Christian fellowship in order to enhance the growth of their spiritual, intellectual, family and social life, and to foster mission and charitable works and social action. It is actively opposed to abortion and supports the protection and sanctity of human life from conception until natural death.

[14]Organized in New Rochelle, New York in 1968, CUFF strives to advance and defend the teachings of the Catholic Church, including as to the sanctity of all human life. Its membership of 16,000 derives from throughout the world.

[15]CDIYD is dedicated to the promotion of natural family planning and defense of human life.

[16]CARE is headquartered in London, England and seeks through its 100,000 members to promote Biblical and Christian action so as to support the integrity of the family, centrality of marriage and the sanctity of human life from conception.

[17]CASE is a legal defense organization dedicated to protecting, preserving and defending the right to proclaim the Gospel

AMERICA ["CFA"][18]; DELAWARE LAWYERS FOR LIFE ["DLL"][19]; DELAWARE RIGHT TO LIFE ["DRL"][20];

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of Jesus Christ in public places. CASE is particularly concerned by a disturbing tendency to undermine both cherished First Amendment freedoms and the fundamental right to life in the name of a judge-created "right" to abortion.

[18]CFA was incorporated in 1977 and is headquarted in Washington, D.C. CFA is a grass-roots organizing and lobbying organization that coordinates activities amongst about 100 organizations nationwide in areas related to social issues, defense and foreign policy, legal and judicial matters, political reform and economic issues. CFA takes a pro-life position on the abortion issue.

[19]DLL is an unincorporated, non-denominational association of Delaware lawyers which was formed approximately two years ago. DLL has a membership of more than 30 Delaware lawyers. The organization is involved in the representation and counseling of primarily single women who are clients of Birthright crisis pregnancy centers. DLL's members respect and defend the sanctity of human life from the moment of conception.

[20]DRL is a Delaware corporation with headquarters in Newark, Delaware. The corporation was formed in 1973 in order to educate people regarding issues of life, abortion and euthanasia. DRL supports respect for human life from fertilization until natural death. DRL has approximately 1,250 dues paying members, with about twice that number on its

EUROVITA[21]; FAMILLES-UNIES ["FU"][22]; FAMILY AND YOUTH CONCERN ["FYC"][23]; FAMILY LIFE ASSOCIATION OF CAMEROON ["FLAC"][24]FAMILY LIFE COUNSELLING

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newsletter mailing list.

[21]Located in Paris, France, Eurovita provides a platform for pan-European pro-life groups in which information and resources are shared to defend the unborn child.

[22]Headquartered in Brussels, Belgium, FU publishes a periodical, runs a library and conducts meetings and youth camps, all with the purpose of promoting the family and human life. Its 1,200 members come from Belgium, France, Germany, Denmark and Switzerland.

[23]FYC was established in 1971 in the United Kingdom and currently has a membership of approximately 25,000 people. FYC, headquartered in Milton Keynes, England and having three branches in the United Kingdom, is concerned with, and has acted as a focus for, the welfare of the family and the issue of abortion which is necessarily an important part of the overall concern for the family.

[24]FLAC was organized in the Kumbo Diocese of Cameroon in 1982. Its membership of more than 500 couples, parents and youth are active in pro-life activities, including, teaching natural fertility regulation, anti-abortion activities, chastity education and other pro-family activities.

ASSOCIATION OF KENYA ["FLC"][25]; FAMILY OF THE AMERICAS ["FOA"][26]; FAMILY PROTECTION LOBBY ["FPL"][27]; FEMINISTS FOR LIFE OF AMERICA ["FFLA"][28];

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[25]FLC is headquartered in Nairobi, Kenya and has a membership of 440. FLC is active in opposition to abortion and provides education on natural family planning, the care and protection of human life from conception and prevention of HIV infection.

[26]FOA was incorporated in 1977 in Missouri. This organization, whose office is in Dunkirk, Maryland, provides educational services to women and families on matters of natural family planning and teaches parents to enable them to remain the primary educators of their children regarding human sexuality. FOA's educational materials have been translated into more than 22 languages and those who work in its programs are drawn from throughout the world.

[27]FPL is an unincorporated association which was formed in Maryland in 1980. The purpose of FPL is to lobby the state legislature on behalf of evangelical churches in Maryland and to represent its membership on Judaeo-Christian issues, including in support of the position that human life begins at conception. FPL has 3,000 active members.

[28]FFLA is a Wisconsin corporation which was formed in 1973 and which actively seeks to continue to promote and expand over a century of effort by feminists toward achieving the goal of a society in which women are empowered to

FORTRESS INTERNATIONAL ["FI"][29]; FIDELITY MAGAZINE ["FM"][30]; FREE SPEECH ADVOCATES ["FSA"][31]; GALWAY FOR LIFE ["GFL"][32]; GROUPEMENT D'ELECTEURS

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make life-affirming decisions for themselves and their children. Headquartered in Kansas City, Missouri, FFLA has a total membership of approximately 5,000 nationwide with 47 affiliated chapters throughout the continental United States. FFLA actively opposes societal pressures, direct and indirect, which compel, coerce or create pressure on a woman to abort her child.

[29]FI is an Illinois corporation formed in 1989 and consisting of 500 members. FI assists women who become pregnant as a result of rape or incest as well as assisting the children conceived as a result of such acts.

[30]FM, located Indiana, explicates family, moral and sexual issues from a Catholic perspective. It takes the pro-life position regarding human life.

[31]FSA is a legal defense project that exists to secure the First Amendment rights to engage in religious witness, peaceful sidewalk counseling, and protest of, or conscientious objection, to the destruction of unborn human life. FSA endeavors to assure a proper and competent defense, due process, and all constitutional rights to those who take a stand against abortion.

[32]Located in Galway, Ireland, GFL distributes information and letters to politicians, newspapers, radio and

CHRETIENS ["GDC"][33]; GUILD OF CATHOLIC LAWYERS OF NEW YORK, INC. ["GCLNY"][34]; HANDICAP DIVISION OF THE SOCIETY FOR THE PROTECTION OF UNBORN CHILDREN ["HDSPUC"][35]; HAPPY FAMILY MOVEMENT OF KOREA ["HFM"][36]; HERMANDAD SAN BENITO POR UNA

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television demanding a referendum in support of the rights of the unborn. It has 120 members drawn from Galway County.

[33]Comprised of Belgians who study politics and disseminate information, GDC assists voters in their choice of political representatives who will respect the moral principles of Christian civilization, including principles relating to the rights of the unborn.

[34]GCLNY, consisting of 300 lawyers from the Archdiocese of New York, provides spiritual and ethical guidance to its members and believes that the lives of all persons, beginning at conception, are entitled to legal protections.

[35]All of the 650 members of HDSPUC are either disabled, or they are the parents of, or care-givers to, disabled persons. Their purpose is to campaign to secure the right to life of all disabled persons from the moment of conception until natural death. HDSPUC is headquartered in London.

[36]HFM runs 80 "old folks homes," 5 homes for unwed mothers and has provided guidance in natural family planning to more than 500,000 couples throughout the Republic of Korea. Its members number 2,000 and they endeavor to protect the family and all human life beginning from

EUROPA CHRISTIANA ["HSB"][37]; HOLT CHILDREN'S SERVICES ["HCS"][38]; HUMAN LIFE FOUNDATION OF NEW ZEALAND ["HLF"][39]; HOSPITAL CHRISTIAN FELLOWSHIP, INC. ["HCF"][40]; HUMAN LIFE INTERNATIONAL SOUTH

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conception.

[37]HSB, which is located in Madrid, Spain, has a membership of 260 and strives to insure that the emerging unity of Europe consists of mores and institutions consistent with the doctrine of the Catholic Church, including that relating to the protection of human life.

[38]Incorporated in Korea in 1977, HCI is a Christian, non-profit organization which strives to help every homeless child to have a family. HCI reunites children with birth families or with adoptive families and provides for the welfare of handicapped children and unwed mothers.

[39]HLF was formed in Auckland, New Zealand in 1984 and incorporated in 1985 under the Charitable Trusts Act of 1957. HLF's objects are to promote the saving and protection of human life throughout its whole course from the moment of conception until natural death, with a view to the moral, ethical and mental advancement of the public in order to educate the public as to the need for respecting human life at every stage of its development.

[40]HCF is headquartered in California and has 5,000 members from throughout the United States HCF conducts conferences, seminars, etc., to, among other things,

AFRICA ["HLSA"][41]; INSTITUTE FOR PREGNANCY LOSS ["IFPL"][42]; INSTITUTO DE CIENCIAS FAMILIARES ["ICF"][43]; JAPAN PRO-LIFE MOVEMENT ["JPM"][44]; JEUNES POUR LA

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educate health professionals on ethical issues.

[41]HLSA is located in Cape Town and strives to uphold the sanctity of human life beginning from conception and to strengthen and preserve Christian family values. Its membership is comprised of Christian professional persons.

[42]IFPL was founded in 1990 as an independent non-profit corporation. It is an education, research and treatment center dedicated to the study of the impact of human pregnancy loss, including induced abortion. IFPL is particularly interested in the examination and remediation of traumatic abortion and adoption experiences, both of which are volitional in nature.

[43]ICF was organized in 1952 Uruguay. ICF's primary purpose is to foster natural family planning. In fulfilling its purpose, it operates doctors' consulting rooms and trains instructors and conducts courses in sexual education and family counseling. It publishes the Family Digest and gives talks on television and radio and conducts a four year university course in the education of Family Social Workers. The organization, operates in Uruguay, Argentina, Paraguay and Brazil.

[44]Located in Kochi City, Japan, JPM educates society, through its newsletter, videos and literature, that life begins at

VIE/JUNGEREN VOOR HET LEVEN ["JPVL"][45]; JURISTEN-VEREINIGUNG LEBENSRECHT e.V. ["JVL"][46]; JURISTENVERENIGING PRO VITA ["JPV"][47]; JOVENES POR EL DERECHO A LA VIDA-ECUADOR ["JPD"][48]; KNIGHTS OF

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conception and man does not have the right to destroy it. Its general membership of over 50,000 comes from throughout Japan.

[45]JPVL, is located in Brussels, Belgium and has a membership of 7,368 drawn from Belgium and France. It seeks, by publishing, conducting meetings and supporting women in distress, to further esteem for human life and the person at each stage of growth, beginning with conception and ending with natural death.

[46]This group of 900 German and other European lawyers conducts an annual congress, lobbies and supports scientific and legal research especially as regards the rights of the unborn.

[47]Located in the Hague, JPV publishes a quarterly, "Pro Vita Etc.", engages in letter writing to newspapers and members of Parliament and brings lawsuits to prevent state subsidization of abortion, all for the purpose of protecting human life from conception. JPV is comprised of about 400 barristers, professors, judges, mayors and members of Parliament.

[48]JPD, organized in Quito, Ecuador, is an organization that educates youth to respect life by conducting lectures, conferences and movies at schools, universities and public offices.

THE SOUTHERN CROSS ["KOSC"][49]; LA TREVE DE DIEU ["LTD"][50]; LEGAL ACTION FOR WOMEN ["LAW"][51]; LIFE[52];

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[49]KOSC is an unincorporated association formed in 1923 in Auckland, New Zealand and now headquartered in Wellington. It is an association of Catholic laymen active in the lay apostolate and having over 500 members in 16 branches throughout New Zealand. KOSC is currently engaged in pro-life issues, speaking out against the increasing number of abortions in New Zealand and opposing the pro-euthanasia lobby. Membership in KOSC is broadly based and includes lawyers, doctors and other professionals.

[50]Located in Puteaux, France and having about 5,000 members, LTD strives to protect the helpless, including pre-borns, handicapped, the infirmed and opposes eugenics, racism and the death penalty. It supports "workers of peace" (rescuers, conscientious objectors to abortion) and denounces abortion as a crime against humanity. It actively opposes the abortion pill, RU-486.

[51]LAW was incorporated in Florida in 1988 to assist women who have been physically injured by abortion by making medical malpractice claims against clinics and doctors because of such injuries. LAW refers women for legal assistance and assembles a data base of the country's most notorious abortionists. LAW operates in all 50 states.

[52]A national registered charity in Warwickshire, England, LIFE has a membership of 32,000 from all of the U.K., Ireland, Gibraltor and elsewhere. By its

LIFE AFTER ASSAULT LEAGUE ["LAAL"][53]; NATIONAL COUNCIL OF CATHOLIC WOMEN ["NCCW"][54]; NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES

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activities which include counseling, care and housing for homeless and unsupported mothers before and after birth, LIFE seeks to uphold the utmost respect for human life from fertilization and to protect the mother and child from abortion.

[53]LAAL is a pro-life organization located in Appleton, Wisconsin with a membership of over 8,000. It offers prayer and encouragement to sexually abused adults and children and victim to victim counseling.

[54]NCCW was established in 1920 and is headquartered in Washington, D.C. It federates 8,000 Catholic women's organizations in the U.S., which include national organizations such as Catholic Daughters of the Americas (150,000 members), Daughters of Isabella (100,000 members) and Ladies of Charity (35,000 members). There are 123 diocesan councils which are members of NCCW as well as 6,690 parish organizations. In total, NCCW represents between 800,000 and 1,000,000 women nationwide. NCCW addresses issues of concern in areas related to church, family, community and legislation, including questions surrounding abortion and the taking of the life of a child without justification.

["NIFLA"][55]; NATIONAL ORGANIZATION OF EPISCOPALIANS FOR LIFE ["NOEL"][56]; NATIVITAS A.S.B.L.[57]; NEW JERSEY RIGHT TO LIFE COMMITTEE, INC.

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[55]NIFLA was incorporated in April 1993. It is headquartered in Manassas, Virginia and advises, counsels and gives legal assistance in matters of public interest law, particularly to pro-life crisis pregnancy centers throughout the United States, of which there are approximately 3,000. NIFLA trains and provides legal assistance to crisis pregnancy centers to enable them to support women in crisis so that they might carry their babies to term.

[56]NOEL, which was organized in 1966 and has offices in Fairfax, Virginia, has a national membership of 20,000 in 189 chapters in all 50 states. NOEL promotes the biblical view of the sanctity of human life at every stage of development and attempts, through education, publications and assisting pregnant women, children and the terminally ill, to influence the Church and culture to embrace this view.

[57]This unique group of 1,500 friends in Brussels, Belgium seeks to instill the joy of Christmas through the year. Its activities include providing help to religious artists, helping those who are poorly educated to enjoy art, helping generally the poor of Brussels and providing special help, before and after birth, to pregnant women to avoid abortion. The groups consists of all religions, the only requirement being that a member have spirit of charity.

["NJRTL"][58]; NEW ZEALAND SOCIETY FOR THE PROTECTION OF THE UNBORN CHILD INCORPORATED ["NZS"][59]; O.U. STUDENTS FOR LIFE ["OU"][60]; OPEN ARMS

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[58]NJRTL is headquartered in Cranford, New Jersey. Comprised of 70,000 families as members, it is the largest pro-life organization in New Jersey. NJRTL is dedicated to protecting human life from the moment of conception until natural death. It engages in educational, legislative and grass-roots efforts and assists women in crisis pregnancies.

[59]Incorporated in New Zealand in 1970, NZS has its national office in Wellington. NZS has more than 28,000 active supporters from throughout the country and is divided into 70 branches. The objects of NZS are to uphold and promote the intrinsic value of human life and to uphold and protect the rights of unborn children from the time of conception. NZS cooperates with government departments, other groups and persons engaged in fostering respect for human life, and in promoting social conditions which will provide the best opportunities for mothers and children. Members come from all walks of life and ages from throughout New Zealand.

[60]OU is a group of 100 peaceful, positive, hard-working students from Oklahoma University endeavor to educate the university community about all stages of fetal development, the effects of abortion and alternatives to abortion.

["OA"][61]; POLISH UNION OF PEOPLE WHO RESPECT HUMAN LIFE ["PUP"][62]; PREGNANCY COUNSELLING SERVICES INCORPORATED ["PCSI"][63]; PRO-LIFE ACTION

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[61]OA is an international Christian ministry that was incorporated in the Washington State in 1986. Located in Columbia, Missouri, OA has chapters throughout the United States and in other countries. OA is dedicated to bringing hope and healing to anyone suffering from abortion's aftermath. OA is made up primarily of people who have personally experienced the tragedy of abortion and its devastating after-effects.

[62]Organized in Warsaw in 1991, PUP engages in activities throughout Poland in an effort to restore legal protections for all human life, beginning at conception and to promote the dignity of all human life and and the human family.

[63]PCSI is a charitable trust incorporated under the laws of New Zealand. Its principal office is located in Auckland, New Zealand and it has 24 branches throughout that country. PCSI is involved in counseling women distressed by pregnancy and those suffering from post-abortion stress. Post-abortion stress stems from the guilt and grief associated with the knowledge that the woman has killed her child. PCSI counsels some 5,000 women annually.

LEAGUE ["PLAL"][64]; PROFESSIONAL WOMEN'S NETWORK ["PWN"][65]; PRO-LIFE PHILIPPINES ["PLP"][66]; PRO-LIFE SOUTH AFRICA ["PLSA"][67]; PRO-VITA-GEZIM EM LEVEM

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[64]PLAL was formed in Illinois in 1980, where it continues to have its main office. PLAL is a pioneer in pro-life activism. It uses every media opportunity to get the pro-life message out and to bring the focus of public attention back to the unborn child. Although PLAL has no actual membership, it has newsletter subscribers and supporters numbering between 8 and 10,000. PLAL's supporters are drawn from throughout the U.S., Canada, Australia, Ireland and Africa.

[65]PWN represents women from a variety of professional and business fields who recognize the sanctity of all human life. PWN members are lawyers, accountants, consultants, teachers, realtors, professors and systems analysts. It has a membership of between 4,000 and 4,500 which is active in pro-life activities. PWN is considered to be the voice of pro-life professional women.

[66]Incorporated in Manila, PLP is a national educational body coordinating pro-life groups and providing instruction concerning life issues. Its 1,200 members and 10,000 cooperating associates are comprised of Catholics, Protestants and Muslims from all walks of life.

[67]PLSA was organized in Cape Town in 1977 to protect human life from conception to natural death by lobbying legislators, demonstrating, publishing newsletters and audio-visual presentations. This group

["PVG"][68]; PRO-VITA SIBIU ASSOCIATION ["PVS"][69]; RIGHT TO LIFE ASSOCIATION (NEW SOUTH WALES) INC. ["RTLA"][70]; RIGHT TO LIFE LEAGUE OF SOUTHERN CALIFORNIA ["RTLLSC"][71]; ROCKLAND COUNTY

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consists of 43,600 members drawn from all religions, races, ages and walks of life.

[68]Located in Mechelem, Belgium, PVG provides help to pregnant mothers in distress and conducts information campaigns in an effort to promote the protection of human life from the moment of conception.

[69]The purpose of PVS is to make Romanian society aware of the full humanity of the unborn child from the moment of conception, to promote the rights of the unborn in accordance with Christian ethics and human rights, and to fight against abortion and abortion laws. The office for this 150 member organization is in Sibiu, Romania.

[70]Headquartered in Sydney, Australia, RTLA has a membership of about 8,000 drawn from the State of New South Wales. RTLA engages in political lobbying, legal actions and educational and counseling activities intended to promote concern for the human rights of the unborn, newborn handicapped and the aged and infirm.

[71]RTLLSC is a California corporation, with offices in Pasadena, California. Its purposes are twofold: to provide education and service. RTLLSC's education department handles several hundred speaking requests per year and the league

CATHOLIC COALITION ["RCC"][72]; SCOTTISH ASSOCIATION FOR NATURAL FAMLY PLANNING ["SANFP"][73]; SERVICE AND RESEARCH FOUNDATION OF ASIA ON FAMILY AND

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holds an annual educational conference with nearly 500 attendees. Its Collegians for Life has clubs on 30 campuses throughout California. In addition, RTLLSC operates 13 Pregnancy Counseling Centers, three medical clinics and four education chapters. RTLLSC has a membership of about 50,000 families drawn mainly from Southern California. In 1992 alone, RTLLSC counseled more than 20,000 women facing unplanned pregnancies.

[72]This unincorporated association was organized in Rockland County, New York in 1990. RCC is a grass-roots organization seeking to educate, inform and speak out on issues supporting Catholic teachings. RCC has approximately 750 members and a mailing list of 4,000. RCC members meet with representatives of school boards and publicizes its positions by communicating with the media and provides a speaking panel to various organizations. RCC takes a position in support of the belief that human life begins at conception and human life is entitled to protection and respect from that point in time until natural death.

[73]Organized in Glasgow, Scotland 1979, SANFP is dedicated to teaching fertility awareness in schools, colleges and to groups of teachers, nurses, doctors, and seminarians to enable couples to responsibly plan their families.

CULTURE ["SARFA"][74]; SOCIETY FOR THE PROTECTION OF UNBORN CHILDREN ["SPUC"][75]; SOCIETY OF ST. VINCENT DE PAUL IN NEW ZEALAND ["SSV"][76]; SOUTHERN

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[74]SARFA is an organization dedicated to going beyond welfare measures for the well-being of women by promoting natural family planning.

[75]SPUC, an unincorporated English association established in 1966, SPUC has 50,000 paying members and 300 local groups throughout the United Kingdom. In addition to its headquarters in London, SPUC has full-time offices in Glasgow, Belfast, Cardiff, Preston, Stockton, Barrow and South London. SPUC was formed to fight the passage of the bill to legalize abortion which was introduced in Parliament. Since its inception, its role has been two-fold: educational and political. As its name implies, its prime concern is to win legal protection for the unborn child from the moment of conception until birth and so most of its work is concerned with spreading and extending knowledge of the humanity of the human person before birth and demonstrating that abortion represents the most fundamental abuse of human rights. SPUC is regarded both inside and outside Parliament as the foremost political body fighting against abortion and euthanasia.

[76]Originally formed in France in 1833, SSV was incorporated in New Zealand in 1883. SSV is an international charitable organization whose members practice Christianity by helping those in need on a person-to-person basis. Although Catholic in origin and character, SSV is open to

DOMINICAN PREACHERS ["SDP"][77]; ST. JOSEPH'S WORKERS FOR LIFE & FAMILY ["StJW"][78]; STICHTING SCHREEW OM LEVEN ["SSOL"][79] STRASBOURG CONVERSATION CIRCLE ["SCC"][80]; THE COUPLE TO

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all who wish to live their faith by loving their neighbors in the person of the needy and by helping people regardless of race, color or creed. SSV has approximately 2,500 members (New Zealand's total population is only 3.5 million) drawn from throughout New Zealand.

[77]This group of five itinerant, Roman Catholic priests from Irving, Texas preach the gospel of Jesus Christ. They are pro-life.

[78]Located in Ottawa, Ontario, Canada, StJW has more than 2,500 members who, by their writings, conferences, lectures, interviews and availability to parents, seek to save the unborn, promote the family and save youth from destructive sex education.

[79]Formed in 1985 in Hilversum, Holland, SSOL has about 120,000 members who publish, issue press releases, conduct press conferences, demonstrate outside abortion clinics, give lectures and petition government to apply God's truth and His love to the issues of life.

[80]SCC is a group given to inviting pre-eminent scholars and intellectuals to lecture at its discussion circle. This group, drawn from all segments of society have one common belief: in the existence of given values, independent of the times

COUPLE LEAGUE OF BELGIUM VZW. ["CCLB"][81] THE COUPLE TO COUPLE LEAGUE FOR THE CZECH & SLOVAK REPUBLICS ["CCLCS"][82]; THE EPISCOPAL SUNOD OF AMERICA ["ESA"][83]; VICTIMS OF ABORTION NEW ZEALAND INCORPORATED ["VOA"][84]; VICTIMS OF CHOICE

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and society, which once neglected, have driven human beings into barbarism. One such value is the regard for the absolute holiness and inviolability of human life from conception until natural death. The patron of the SCC is His Imperial Highness, Dr. Otto von Habsburg, member of the European Parliament.

[81]CCLB is located in Rotselaar, Belgium and teaches natural family planning and promotes pro-life, pro-chastity and pro-family values in schools. Its 1,700 members are from Belgium and The Netherlands.

[82]Located inKladno, The Czech Republic, CCLCS teaches natural family planning and chastity and is opposed to abortion.

[83]Located in Ft. Worth, Texas, ESA, through its national membership of more than 18,000, seeks to uphold and extend traditional Christian teaching on theology and moral behavior within the Episcopal Church including as to the sanctity of human life, beginning at conception.

[84]VOA was founded in 1989 and incorporated in New Zealand in 1991. VOA is headquartered in Wellington, New Zealand and has nine branches each of which are staffed by a coordinator and

["VOC"][85]; WOMEN AFFIRMING LIFE ["WAL"][86]; WOMEN FOR FAITH AND FAMILY ["WFF"][87]; WOMEN FOR LIFE

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counselors. VOA is a post-abortion counseling organization for victims of abortion, including women, men, and children of women who have had abortions.

[85]VOC was incorporated about 10 years ago in California. VOC provides education, information and counseling to women, primarily those suffering from post-abortion syndrome. VOC's executive director travels throughout the United States to train counselors who then counsel women and educate the public on issues arising out of post-abortion syndrome. VOC publishes a manual and produces articles and pamphlets for a readership of between 2 and 3,000, and conducts workshops, conferences and seminars throughout the world.

[86]WAL was founded in 1990 and has its principal office in Boston, Massachusetts. Its membership of between 700 and 1,000 is drawn from 42 states. WAL's purpose is to voice the commitment of Catholic women in support of women and the dignity of life and motherhood and to serve as a national organization of Catholic women committed to upholding the sanctity of each human life from conception to natural death. WAL seeks to offer a public witness by women in defense of the unborn and unwanted through personal commitment, educational efforts, prayer and home and professional life.

[87]WFF, which has its main office in St. Louis, Missouri, was incorporated in 1984. WFF is a Catholic women's

(N.Z.), INC. ["WFL"][88]; WOMEN FOR WOMEN ["WFW"][89];

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organization which educates people on issues important to Catholics including those related to the family and is intended to aid women in their efforts to continually deepen their understanding of the Catholic faith. WFF is an organization committed to pro-life principles from conception to natural death.

[88]WFL is a New Zealand corporation, having been formed in 1978. Its national office is located in Auckland, New Zealand. WFL defends the rights of the unborn child from conception and supports the right to life of all persons until natural death. WFL supports and encourages women in their role as mothers, recognizing the major contributions made by them in their child-rearing and home-making roles. WFL has a membership numbering 2,000, which is drawn from many areas of New Zealand.

[89]WFW is a corporation that was formed in Indiana in 1987 to protect and foster respect for the sanctity of human life from the moment of conception until natural death. WFW upholds the Virgin Mary as a role model for women and recognizes the equality of men and women, while acknowledging their differences so as to promote the dignity and value of womanhood. WFW's membership derives from all denominations from 28 states, Canada, India and the Philippines.

WORLD ORGANIZATION FOR THE FAMILY ["WOFF"][90].

SUMMARY OF ARGUMENT

This Court should grant certiorari in this case because the Court, in *Roe v. Wade*, 410 U.S. 113 (1973), declined to decide the most important issues presented by the instant petitions: when does the life of the child begin and, if the child is a human being prior to birth, does the child have constitutional rights?

The question of when the child's life begins was intentionally left to future courts because of the *Roe* Court's concern about the inadequacy of "man's knowledge" in 1973. This question is now before the Court in the first instance and the only criterion for its determination is the correctness of the Court's decision. Stare decisis principles (which might apply if *Roe* had attempted to resolve the inquiry) do not apply here. Thus, it is the Court's duty to resolve these questions because it is now clear that they can be resolved.

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[90]WOFF is dedicated to helping parents to remain primary educators of their children. The organization is a strong defender of human life from the moment of conception and they promote the natural method of family planning.

The Court has never considered the legal significance of the fact that the unborn child is a human being who experiences pain. No acceptance of *Roe* is possible until the Court does so.

In that a child is a human being prior to birth, none of the concerns of the Court as expressed in *Roe* (such as reliance and workability) are principles that preclude a decision which recognizes the child's right to live; a result different than that reached in *Roe*. Such a determination would demonstrate that *Roe*, in reality, is gravely at odds with the principles that protect the most basic of human rights: the welfare of children, even their very existence.

Until these central issues are addressed and the Court can state with conviction that all of the issues have been correctly decided, it is unlikely that *Roe* can ever be respected or accepted.

ARGUMENT

I. THE CENTRAL QUESTION PRESENTED IN THIS CASE HAS NEVER BEEN RESOLVED BY THE COURT, AND IS THEREFORE BEFORE THIS COURT AS AN "ORIGINAL MATTER." THE REQUIREMENTS OF STARE DECISIS FOR OVERRULING ROE V. WADE ARE COMPLETELY SATISFIED BY THE FACTS. THE COURT SHOULD GRANT THE WRIT AND DECIDE THE CHILD'S RIGHTS.

As much as anything else, this Court's decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. _, 112 S.Ct. 2791 (1992) reaffirmed the central holding in the twenty-year old case of *Roe v. Wade*, 410 U.S. 113 (1973) based on principles of *stare decisis*.[91] In the Joint Opinion, the Casey Court said:

> We do not need to say whether each of us, had we been members of the Court when the valuation of the state interest came before it as an original matter, would have concluded, as the *Roe* court did, that its weight is insufficient to justify a ban on abortions prior to viability even when it is subject to certain exceptions. The matter is not before us in the first instance, and coming as it does after nearly twenty years of litigation in *Roe's* wake we are satisfied that the immediate question is not the soundness of *Roe's* resolution of the issue, but the precedental force that must be accorded to its holding. *Casey*, 112 S.Ct. at 2817.

The principles of *stare decisis* do not preclude a decision in the instant case which is different than that reached in *Roe* for two

[91] Two of the three authors previously expressed views that apparently challenged *Roe's* central holding; see, *Thornburgh v. A.C.O.G.*, 476 U.S. 747, 814, 828 (O'Connor, J., dissenting: "I do, however, remain of the views expressed in my dissent in *Akron[v. Akron]*, 462 U.S. at 459-466. The state has compelling interests in ensuring the general health and protecting potential human life, and these interests exist 'throughout pregnancy'"). Justice Kennedy joined in the opinion of the Chief Justice in *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), in which he stated: "We do not see why the state's interest in protecting potential human life should come into existence only at the point of viability."

distinct reasons: (1) the central issue in this case (when does the life of the child begin and does he/she have constitutional rights before birth?) was never decided by *Roe*; and (2) even if the doctrine of *stare decisis* does apply, Loce and Krail satisfy all of the requirements necessary to overrule *Roe*.

A. THE QUESTION OF WHEN THE LIFE OF A CHILD BEGINS WAS NOT DECIDED BY *ROE* AND IT IS THEREFORE THE DUTY OF THIS COURT TO RESOLVE THE QUESTION. IT WAS THE PROMISE OF *ROE* THAT THIS COURT WOULD DECIDE THIS ISSUE WHEN "MAN'S KNOWLEDGE" WAS SUFFICIENT TO DO SO.

Roe did not decide when the life of a child begins. The *Roe* Court specifically found that, in 1973, it could not decide the question:

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy and theology are unable to arrive at any consensus, the judiciary, *at this point in the development of man's knowledge*, is not in a position to speculate as to the answer. 410 U.S. at 159 (emphasis added).

Roe specifically reserved this particular issue for later Courts by recognizing that "man's knowledge" grows and expands with new information and greater appreciation of the old. *Roe* recognized that sufficiency of knowledge is a function of time and that, because "at

this point in the development of man's knowledge" the Court could not reach a conclusion, the question was reserved for future review.

Here, the issue is before the Court "in the first instance." The Court is in no sense bound by *Roe's* inability to decide this issue and *stare decisis* is not, therefore, applicable to the issue in this case. C.f., *Baker v. Carr*, 369 U.S. 186, 236-237 (1962); *Penna.-Reading, S.S. Lines v. Bd. of Pub. Utility Commrs.*, 74 A.2d 265 (N.J. 1950) (if facts, which form the basis for a constitutional principle in one case differ in a subsequent case, the first is not precedent for the second). The legal significance of the fact that the unborn child is a human being capable of experiencing pain has never before been considered.

Casey asks the nation to accept *Roe's* central holding in an effort to finally resolve a divisive national debate. But *Roe* itself *never ruled on the central issue*, thereby reserving it for future courts. There can never be an acceptance of *Roe* until this Court decides the central issue and is able to explain with conviction that its decision is legally correct. It would constitute a "breach of faith" with the people of this nation, as well as with the constitutional principles on

which the nation was built, if the Court leaves unaddressed the question on which the entire debate turns. By refusing to answer the question of when life begins, *Roe* essentially promised that the Court would answer the question when it was able to do so. It must now do so, correctly and with convictio .

"At this point in the development of man's knowledge" we now know that a child is a complete and separate human being from conception (and certainly long before "viability") (Loce pet. 13-21) and this known fact renders *Roe's* analysis of the child's rights irrelevant (Loce pet. 9-11). These issues have now devolved upon this Court for resolution and no interpretation of *stare decisis* principles relieves the Court of the duty to address them.

B. EVEN IF PRINCIPLES OF *STARE DECISIS* WERE APPLICABLE TO THIS CASE, BECAUSE OF NEW FACTS AND A NEW APPRECIATION OF OLD ONES, *STARE DECISIS* DOES NOT PREVENT THE COURT FROM FINDING THAT THE CHILD HAS CONSTITUTIONAL RIGHTS PRIOR TO BIRTH.

Casey described four principles of *stare decisis* which were felt to preclude the overruling of *Roe*: (1) no change of fact; (2) no inconsistency with other principles of constitutional law; (3) reliance; and (4) workability. *Casey*, 112 S.Ct. at 2808-2812. These

principles, rather than precluding review, actually are absent insofar as the issue of the child's rights is concerned.

1. New Facts and a New Appreciation of Old Ones.

Justice Douglas, a member of the *Roe majority*, has said of *stare decisis*:

> [A] search for a static security - in the law - is misguided. The fact is that security can only be achieved through constant change, through the wise discarding of old ideas...and *through the adopting of others to current facts*. It is easy...to overemphasize *stare decisis* as a principle in the lives of men. ...*The difficulty is to estimate what effect a slightly different shade of facts will have*. (emphases added) Douglas, William O., *Stare Decisis*, 49 Colum. L. Rev. 735-743, 735-736 (1949).

The new information now available about when the life of a child begins, and the fact that the child experiences pain as early as eight weeks after conception (Loce pet. 13-30), are of particular importance in this analysis.

Firstly, once it is appreciated that the child is a human being who experiences pain before birth, the Court, in order to uphold *Roe*, would have to completely ignore prior holdings of this Court and other authorities. (Loce pet. 9-11; 30-40.) If *Roe* itself ignored precedent, it is difficult to conceive of a justification to extend any

precedental value to it. Doing so would frustrate *stare decisis* principles by allowing a maverick opinion which ignores stare decisis to effect a change in the law without regard to the doctrine, whereupon other courts would be bound by *the same rules of stare decisis* to follow the decision which originally ignored them.

Secondly, new facts, or the new appreciation of old facts, are often a basis for overruling precedent. The *Casey* Court found that there were no new facts before it concerning the state's power to intrude into a woman's personal decisions. *Casey*, 112 S.Ct. at 2811-2812. Yet, *Casey* cited with approval Justice Brandeis' dissent in *Burnet v. Coronado Oil and Gas Co.*, 285 U.S. 393, 405-413 (1932), that, in many cases where the Court applies the due process clause, the issue before it is a mixed question of fact and law and the true nature of the factual inquiry should not be obscured merely because it is a court that is making the determination. 285 U.S. at 410-411. Whether an unborn child is a human being who enjoys constitutional rights is just such a mixed question of law and fact (Loce pet.11-13).

When this Court, in *Mapp v. Ohio*, 367 U.S. 643 (1961), overruled *Wolf v. Colorado*, 338 U.S. 25 (1949) (which was decided only twelve years earlier), the Court based its ruling on a new appreciation of facts which made adoption of the "exclusionary rule" necessary. *Mapp* is an example of a case which applied the due process clause and which involved a mixed question of fact and law. The facts suggested the need for a particular method to implement a recognized right. (In the strictest sense, abortion is seen as a method of implementing an underlying privacy right.) In *Baker v. Carr*, *supra* (in which the Court overruled *Colegrove v. Green*, 328 U.S. 547 (1946) and distinguished *Colegrove v. Barrett*, 330 U.S. 804 (1946)), the Court concluded that new facts required the result.

In Loce, two ultimate facts must now be taken into consideration: (1) that Mr. Loce's child was indeed a human being from the moment of conception; and (2) that children such as his experience pain (Loce p. 13-30). Both conclusions derive from a new appreciation of old facts. They require a new recognition of the interests of the child and father, they give rise to the child's rights and they impact upon the application of due process rights. *Burnet*,

supra, (Brandeis, J. dissenting), 285 U.S. at 405-413. In addition, our experiences since *Roe*, because of new advances in contraception, the disappearance of social stigma and the new information relating to the profound harm abortion causes the mother (Loce pet. 40-44), show that abortion is an unnecessary method of implementing the privacy interest sought to be protected, as well as one which unjustly impacts the child. C.f. *Mapp v. Ohio, supra*.

2. Whether *Roe* is in Conflict with Precedent Which is at Odds with Personal Liberties Depends Upon Whether the Child is a Human Being.

The *Casey* majority argued that *Roe* is not in conflict with precedent and does not influence developments that conflict with personal liberties. Once the child's humanity is acknowledged, as it must be (Loce pet. 13-40), this conclusion is unsupportable.

Casey requires that one ignore the reality that, before birth, the child is a human being who experiences pain. *Roe* conflicts with all law which has sought to protect the interests of children and is tragically fatal for the children who suffer during abortion, as well as to the many children who survive the procedure. Before *Roe*, the New Jersey Supreme Court held that the child was a separate person

whose life began at conception and who had constitutional rights before birth. *Smith v. Brennan*, 157 A.2d 497, 504-505 (N.J. 1960); *Raleigh Fitkin-Paul Morgan Memorial Hospital v. Anderson*, 201 A.2d 537 (N.J. 1964). This principle of New Jersey law was recently reaffirmed in *Hummel v. Reiss*, 608 A.2d 1341, 1345-1346 (N.J. 1992). *Smith* and *Raleigh Fitkin* reflect New Jersey's strong policy in favor of protecting life. *Smith*, 157 A.2d 504-505; *Raleigh Fitkin*, 201 A.2d 532. This policy, prior to *Roe*, resulted in the protection of children from the pain and harm of abortion. See N.J.S.A. 2A:87-1. (Performing an abortion was a high misdemeanor which brought a penalty of fifteen years incarceration. See *New Jersey v. Novak*, 121 A.2d 521 (N.J. 1956); *New Jersey v. Siciliano*, 117 A.2d 490 (N.J. 1956)). In refusing to recognize the so-called tort of "wrongful birth", the New Jersey Supreme Court in 1967 eloquently explained New Jersey's public policy against abortion:

> It is basic to the human condition to seek life and hold on to it however heavily burdened. ...[T]he right to life is inalienable in our society. ...[W]e are not faced here with the necessity of balancing a mother's life against that of a child. The sanctity of a single human life is the decisive factor ... [I]t may have been easier for the mother and less expensive for the father to terminate the life of the child while he was an embryo, but these alleged

> determinants cannot stand against the preciousness of a single human life ... *Gleitman v. Cosgrove*, 227 A.2d 689 (N.J. 1967).

Roe required that New Jersey abandon its policy of protecting children's lives. In 1979, even when *Roe* forced it to recognize the wrongful birth cause of action, New Jersey's Supreme Court noted:

> One of the most deeply held beliefs of our society is that life ... is more precious than non-life [citation omitted] ... concrete manifestations of this belief are not difficult to discover. Documents which set forth principles upon which our society are founded are replete with references to the *sanctity of life*. The federal constitution characterizes *life as one of the three fundamental rights* of which no one can be deprived without due process of law ... our own constitution proclaims that the 'enjoyment and defending of life' is a natural right. N.J. CONST. (1947), ART. I, SEC. I. The declaration of independence states that the primacy of man's 'unalienable' right to life is a 'self-evident truth'. Nowhere in these documents is there to be found an indication that the life of persons suffering from handicaps are to be less cherished than those of non-handicapped human beings. *Berman v. Allan*, 80 N.J. 421, 429, 404 A.2d 8 (N.J. 1979).

The harm created by *Roe* is clear when one recognizes that the unborn child is a human being. Law that was carefully developed to protect innocent lives was swept away because the Court failed to recognize that these were persons in fact. For the children who are not aborted, *Roe* is often cruel. New Jersey must now recognize a cause of action, the effect of which is to tell a child that a doctor

who failed to inform his or her parents that the child would be born with a handicap, must pay large monetary damages to the parents because they lost the opportunity to terminate the child's life before birth. See, *Berman v. Allan*, *supra; Procanik v. Cillo*, 478 A.2d 755 (N.J. 1984). That these children must live with the knowledge that their lives are devalued by society (and even by their parents) to the extent that their parents are entitled to be compensated for their "wrongful births", is a detestable harm attributable directly to *Roe*.

A father has no right to demand that a woman have an abortion, nor should he. The embarrassment, hardship or distress that flow to him as a result of an unplanned pregnancy, whether or not he is prepared to rear or support the child, is irrelevant to whether society should extend to him the "right" to take the child's life. However, where the right he seeks to enforce is one which is consistent with the child's best interests, the same statute that imposes obligations upon him based on the single act of conception, extends to him the right to affirmatively discharge his obligations through custody or visitation and support. Likewise, under the adoption statutes, a judgment of adoption in favor of another man cannot be entered

against the natural father over his objection, unless there is a specific finding of abandonment or neglect. N.J.S.A. 9:3-46. The right of a natural father who is not married to the mother is based solely on his status as genetic father. See *In re Adoption of a Child by J.R.D.*, 588 A.2d 446 (N.J. Super. Ct. App. Div. 1990).

The issue can be framed in different ways. *Casey* may choose to frame it in terms of a father blocking the mother's right to take the life of her child. The State of New Jersey, on the other hand, proposes that the child's rights, and the father's enjoyment of the benefits of his relationship with his child (which are fundamental constitutional rights), can be entrusted to another who can terminate the child's life and destroy the relationship amongst the mother, father and child for any or no reason at all.

Building on *Roe*, *Casey* found that, although a father's constitutional rights and those of a mother are "equal" after birth, the mother's rights can be exercised so as to destroy those of the father before birth. *Casey*, 112 S.Ct. at 2830. This may be the consequence of *Roe*, but it is drastically in conflict with precedents dealing with the equal protection of the laws. See *Craig v. Boren*, 429 U.S. 190

(1976); *Califano v. Goldfarb*, 430 U.S. 199 (1977) (gender based classifications require at least an interemediate level of scrutiny -- strict scrutiny if there is the denial of a fundamental right[92]).

Under the New Jersey Parentage Act N.J.S.A. 9:17-40 *et seq.*, the obligations of Mr. Loce as father derive from the fact of conception alone. The birth, of course, is the natural consequence of conception.

If the fundamental constitutional right of the father is implicated, then the creation of a classification extending exclusive decision making power to the mother violates equal protection principles because there is no compelling interest in the state to permit this. *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Baker, supra*. If the father's constitutional rights are not fundamental, then the classification created is gender based and requires intermediate scrutiny. *Craig v. Boren*, 429 U.S. 190 397 (1976). As a result, the state classification must serve important governmental objectives and be substantially related to the achievement of those objectives. The objective here is to protect the right of the mother to make decisions

[92] *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969); *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533, 561-562 (1964).

about whether she should have children. See *Roe*, 410 U.S. at 153. That objective, however, is served once the mother conceives; she then has a child and, at that point, the inconvenience to the mother of carrying the child, although real and substantial, can never outweigh the child's interest in life.

3. Given the Fact that the Child is a Human Being, the Principles of Reliance and Workability Have no Application.

In *Casey* the Court said that, since some segments of our society have relied on the Court's holding in *Roe*, it should be affirmed (*Casey*, 112 S.Ct. at 2809), even if the Court cannot say that it was correctly decided in the first place. *Id.* at 2817.

By *Casey's* own estimation, the last case before the Court which required it to determine an issue of the magnitude of those raised here, was *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483 (1954). *Casey*, 112 S.Ct. at 2814-2815. The irony of *Casey's* discussion of reliance is in the fact that it was the very same argument made by those who sought in *Brown* to perpetuate racial segregation by affirming *Plessy v. Ferguson*, 163 U.S. 537 (1896). The reliance argument in *Casey* is indistinguishable from the reliance argument of

the four states which sought to preserve segregation in the consolidated cases that are collectively known as *Brown v. Bd. of Ed.*[93]

Arguing that longstanding principles which have been continually relied upon should be left unchanged, John W. Davis argued in *Briggs, supra*, that "somewhere, sometime to every principle comes a moment of repose when it has been so often announced, so confidently relied upon, so long continued, that it passes the limits of judicial discretion and disturbance." 49A Landmark Briefs at 490. Davis asserted that the South Carolina statute must stand because:

> [W]e *relied* on the facts that this Court had, not once but seven times, ... pronounced in favor of the "separate but equal" doctrine. We *relied* on the fact that the courts of last appeal in some sixteen or eighteen states have passed upon the validity of

[93]*Brown* was actually a grouping of four segregation cases decided together. The other cases were *Briggs v. Elliott*, *Davis v. County School Board of Prince Edward County, Va.*, and *Gebhart v. Belton*. These cases concerned various statutes pertaining to school segregation in the states of Kansas, South Carolina, Virginia, and Delaware. Although, decided separately, *Bolling v. Sharpe*, 347 U.S. 497 (1954) was also argued with *Brown*. The initial oral argument for these cases occurred before the United States Supreme Court on December 9-11, 1952, with Chief Justice Vinson presiding. The cases were subsequently reargued at the Court's request on December 7-9, 1953, after Earl Warren succeeded Mr. Vinson as Chief Justice.

> the "separate but equal" doctrine vis-a-vis the Fourteenth Amendment. We *relied* on the fact that Congress has continuously since 1862 segregated its schools in the District of Columbia. *Id.* (Emphases added).

Indeed, it was the theme of all of the states that desegregation was contrary to longstanding customs and traditions which were "deeply ingrained", the disturbance of which would cause such dire consequences that, on those grounds alone, *Plessy* had to be affirmed. See, J. Lindsay Almond, *id.* at 383-384; 512-513; Kansas, *id.* at 752; Davis, *id.* at 490-491; T. Justin More, *id.* at 407; 510-511; *Casey* observed:

> While we think *Plessy* was wrong the day it was decided, [citation omitted], we must also recognize that the *Plessy* court's explanation for its decision was so clearly at odds with the facts apparent to the Court in 1954 that the decision to examine *Plessy* was on this ground alone not only justified but required. *Casey*, 112 S.Ct. at 2813.

This statement is important in the instant case because, whether or not the *Roe* Court believed that it could determine when the life of a human being begins, no one can now, in light of current evidence, dispute that the biological life of a complete, separate and unique human being begins at conception. The Court likens *Brown* to *Roe*, but *Roe* more closely resembles *Plessy* than *Brown* and *Brown* more

closely resembles Loce than *Roe*. *Roe* simply does not possess the moral force of *Brown*. *Brown* corrected a wrong. *Roe* created one.

The Court should grant certiorari in this case without fear that the overruling of *Roe* will be any more difficult to implement than was the ruling in *Brown* -- and no harder for the public to accept. When it is understood that these children are human beings who experience pain and that the premise of this nation is that the life of every human being has value and that each one of us is unique and irreplaceable, an acceptance of the overruling of *Roe* will follow.

CONCLUSION

Because *Roe* did not decide the central issues presented by this case, and the principles of *stare decisis* as applied to this case do not otherwise preclude the overruling of *Roe*, the Court should grant the writ of certiorari as requested.

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